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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,302	10/17/2001	Keith D. McBrayer	MCBCP0101USA	7849

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EXAMINER	
COHEN, AMY R	
ART UNIT	PAPER NUMBER
2859	

DATE MAILED: 05/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/982,302	MCBRAYER, KEITH D.	
	Examiner	Art Unit	
	Amy R Cohen	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 February 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5,7-13 and 15-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3,5,7-13,19,26 and 27* is/are rejected.

7)☒ Claim(s) *4,15-18,21-25 and 28* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *17 October 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 26 is rejected under 35 U.S.C. 102(b) as being anticipated by McMasters Scott (U. S. Patent No. 306,869).

McMasters Scott teaches a combination layout tool comprising a triangular shaped member (a) having three side edges (b, c, d) that intersect at opposite ends to form three angle corners (Fig. 1), tread and riser slots (n) in said member extending at 90° relative to one another, said tread and riser slots having inner ends terminating in a closely spaced relation from one another, and outer ends terminating in a plane parallel to one of said side edges (Fig. 1).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palitto (U. S. Patent No. 2,593,914).

Palitto discloses a combination layout tool (7) comprising two triangular shapes wherein each triangular shape forms two 67.5° angles and one 45° angle (Fig. 2, two triangles formed along the bisecting line 9).

Palitto does not disclose a combination layout too comprising one triangular shaped member, with a perpendicular height from one end of said 67.5° angle corners to an opposite side edge in excess of 20 inches and wherein said height is approximately 24 inches.

It would have been obvious to one of ordinary skill in the art to modify the combination layout tool of Palitto, to break the tool along the bisecting line 9, forming two triangles, each with two 67.5° angle corners and a 45° angle corner, since Palitto discloses the desire to form angles at 67.5° (Col 1, lines 45-53 and Col 3, lines 10-19).

Regarding the height of the tool: Palitto discloses a combination layout tool where the height is approximately 3 inches. However, to choose a height of 20 inches or 24 inches, absent any criticality, is only considered to be the "optimum" value of the height of the tool, as stated above, that a person having ordinary skill in the art would have been able to determine using routine experimentation based, among other things, on the desired accuracy and since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. See ***In re Boesch***, 205 USPQ 215 (CCPA 1980).

5. Claim 3, 5, 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright (U. S. Patent No. 5,170,568) in view of Hoag (U. S. Patent No. 5,943,974).

Write discloses a combination layout tool (1) comprising a triangular shaped member (1) having three side edges that intersect at opposite ends to form three angle corners (Fig. 2), one of said side edges extending between two of said corners having a notch (3) in said one side edge

that is closer to one of said two corners than the other of said two corners, and a plurality of laterally spaced apart elongated incremental angle lines (13) in said member adjacent the side edge of said member opposite said one corner that extends in a direction in radial alignment with said notch in said one side edge (Col 3, lines 16-33).

Write discloses the combination layout tool wherein one of the incremental angle lines is a 90° angle line in a direction perpendicular to said one side edge in alignment with said notch (Fig. 3).

Write discloses the combination layout tool comprising a triangularly shaped slot (14) in close proximity to said notch having a sharp corner facing said notch for latching one end of a string in said corner of said triangularly shaped slot that has been pulled over said notch and one of said angle lines and through said triangularly shaped slot (Fig. 3).

Write discloses the combination layout tool comprising at least one rafter tail/ridge cut pattern formed in said one side edge is spaced relation for said notch (Fig. 3 and Col 3, lines 53-61).

Write does not disclose a combination layout tool wherein the angle lines are elongated incremental slots.

Hoag discloses a combination layout tool (10) wherein measured increments are elongated incremental slots (14).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination layout tool of Write to use slots as the elongated angle markings, as taught by Hoag, so that fabric or thread could be used to mark and angle

measurement and in order to more precisely form a marking of an angle with the slot to guide a writing implement.

6. Claims 7-9, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Write and Hoag as applied to claims 3, 5, 10-11 above, and further in view of Premo (U. S. Patent No. 2,579,857).

Write and Hoag disclose a combination layout tool as described above in paragraph 5.

Write and Hoag do not disclose a combination layout tool wherein said incremental angle slots are spaced 5° apart, further comprising at least one additional elongated angle slot between said 5° angle slots that extends in a direction in radial alignment with said notch in said one side edge, wherein an additional elongated angle slot is at 22½° as measured from said notch in a direction away from said one side edge, said additional elongated slot extending in a direction in radial alignment with said notch in said one side edge, wherein an additional elongated angle slot is at 67½° as measured from said notch in a direction away from said one side edge, said additional angle slot extending in a direction in radial alignment with said notch in said one side edge; and comprising a pivot point receiving hole in said marker adjacent one of said corners and a plurality of incrementally spaced marker receiving holes in said member in incremental spaced relation from said pivot point hole for drawing different diameter circles by rotating said tool about a pivot point extending through said pivot point hole using a marker and extending through one of said marker receiving holes, said pivot point receiving hole and said marker receiving holes being in a common plane is parallel spaced relation to said one side.

Premo discloses a combination layout tool (10) wherein incremental angle holes (27) are spaced 5° apart, further comprising at least one additional elongated angle hole between said 5°

angle slots that extends in a direction in radial alignment with said notch in said one side edge (Fig. 1), wherein an additional elongated angle hole is at 22½° as measured from said notch in a direction away from said one side edge (Fig. 1), said additional elongated slot extending in a direction in radial alignment with said notch in said one side edge (Fig. 1), wherein an additional elongated angle hole is at 67½° as measured from said notch in a direction away from said one side edge (Fig. 1), said additional angle slot extending in a direction in radial alignment with said notch in said one side edge (Fig. 1).

Premo discloses the combination layout tool comprising a pivot point (10) receiving hole in said marker adjacent one of said corners and a plurality of incrementally spaced marker receiving holes (17, 21) in said member in incremental spaced relation from said pivot point hole for drawing different diameter circles by rotating said tool about a pivot point extending through said pivot point hole using a marker and extending through one of said marker receiving holes, said pivot point receiving hole and said marker receiving holes being in a common plane is parallel spaced relation to said one side (Fig. 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination layout tool of Write and Hoag, to have a scale of 5° slots and having markings at 22½° and 67½°, and to have a pivot point hole and a plurality of marker holes, as taught by Premo, so that a user would have a more exact angle scale with which to work, so that specific angles needed in construction would be present, and so that lengths could be marked and pivoted using the pivot holes.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Write and Hoag as applied to claims 3, 5, 10-11 above, and further in view of Palitto.

Write and Hoag disclose a combination layout tool as described above in paragraph 5.

Write and Hoag do not disclose a combination layout tool wherein said member has two 67½° angle corners and one 45° angle corner, said one side edge extends between said 45° angle corner and one of said 67½° angle corners, and said notch in said one side edge is closer to said one 67½° angle corner than the intersection of a line extending perpendicular from the other of said 67½° angle corners with said one side edge.

Palitto discloses a combination layout tool (7) comprising two triangular shapes wherein each triangular shape forms two 67.5° angles and one 45° angle (Fig. 2, two triangles formed along the bisecting line 9).

Palitto does not disclose a combination layout too comprising one triangular shaped member, with a perpendicular height from one end of said 67.5° angle corners to an opposite side edge in excess of 20 inches and wherein said height is approximately 24 inches.

It would have been obvious to one of ordinary skill in the art to modify the combination layout tool of Palitto, to break the tool along the bisecting line 9, forming two triangles, each with two 67.5° angle corners and a 45° angle corner, since Palitto discloses the desire to form angles at 67.5° (Col 1, lines 45-53 and Col 3, lines 10-19).

8. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Write and Hoag as applied to claims 3, 5, 10-11 above, and further in view of Roads (U. S. Patent No. 1,315,333).

Write and Hoag disclose a combination layout tool as described above in paragraph 5.

Write and Hoag do not disclose a combination layout tool wherein there are at least two rafter tail/ridge cut patterns in said one side edge in spaced relation from one another and from

said notch and wherein one of said patterns is a 4 and 12 pitch and another of said patterns is a 6 and 12 pitch pattern.

Roads discloses a combination layout tool comprising a triangular shaped member (Fig. 1) wherein there are at least two rafter tail/ridge cut patterns (18) in said one side edge in spaced relation from one another and from said notch and wherein one of said patterns is a 4 and 12 pitch and another of said patterns is a 6 and 12 pitch pattern (Fig. 1 and Col 1, lines 9-39).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination layout tool of Write and Hoag to use two pitch patterns of 4 and 12, and 6 and 12, as taught by Roads, so that multiple scales of pitch patterns would be located on one combination layout tool.

9. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over McMasters Scott.

McMasters Scott discloses the combination layout tool as described above in paragraph 2.

McMasters Scoot does not disclose a combination layout tool wherein said tread slot has a length of 10 inches and said riser slot has a length of 7 inches.

Regarding the length of the tread and riser slots: McMasters Scott discloses a combination layout tool where the tread and riser slots each have a length but does not specifically disclose particular values for their length. However, to choose a length of 10 inches for the tread slot and 7 inches for the riser slot, absent any criticality, is only considered to be the "optimum" value of the length of the tread and riser slots, as stated above, that a person having ordinary skill in the art would have been able to determine using routine experimentation based, among other things, on the desired accuracy and since it has been held that discovering an

optimum value of a result effective variable involves only routine skill in the art. See ***In re Boesch***, 205 USPQ 215 (CCPA 1980).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination layout tool of McMasters Scott to make the length of the tread slot 10 inches and the length of the riser slot 7 inches, since these are lengths that are commonly used and would be needed to make repeated markings.

Allowable Subject Matter

10. Claims 4, 15-18, 21-25 and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Reasons for Allowance

11. The following is a statement of reasons for the indication of allowable subject matter:

Claim 4: The prior art of record does not disclose or suggest a combination layout tool comprising a triangular shaped member, having a notch in said one side edge, and a plurality of laterally spaced apart elongated incremental angle slots in said member adjacent the side edge of said member opposite said one corner that extend in a direction in radial alignment with said notch in said one side edge, wherein said member has two 67½° corners and one 45° angle corner, in combination with the remaining limitations of the claims.

Claim 15: The prior art of record does not disclose or suggest a combination layout tool wherein each of said patterns consists of two straight sides intersecting said one side edge and

intersecting one another at a 90° angle, and elongated angle slots in said member that extend in a direction in alignment with the respective short side of each of said patterns in combination with the remaining limitations of the claims.

Claims 16-18: The prior art of record does not disclose or suggest a combination layout tool comprising tread and riser slots in said member extending at 90° relative to one another, said tread and riser slots having inner ends terminating in closely spaced relation from one another and outer ends terminating in a plane parallel to the one side edge in combination with the remaining limitations of the claims.

Claims 21-25: The prior art of record does not disclose or suggest a combination layout tool comprising a plurality of elongated spaced apart parallel stud layout slots in said member extending in a direction perpendicular to said one side edge in combination with the remaining limitations of the claims.

Claim 28: The prior art of record does not disclose or suggest a combination layout tool comprising a hole in said member in the same plane in which the outer ends of said tread and riser slots terminate, said hole being spaced from said outer end of said riser slot a distance corresponding to the distance between the outer ends of said tread and riser slots in combination with the remaining limitations of the claims.

Response to Arguments

12. Applicant's arguments with respect to claims 1-5, 7-13, 15-19, and 20-28 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents disclose combination layout tools Austin (U. S. Patent No. 6,553,678), Mussell (U. S. Patent No. 5,727,325), Grizzell (U. S. Patent No. 5,239,762), Hore (U. S. Patent No. 4,461,092), Callahan (U. S. Patent No. 2,631,376), Sloper (U. S. Patent No. 1,980,765), Pecker (U. S. Patent No. 1,579,137), and McLeod (U. S. Patent No. 1,050,969).

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy R Cohen whose telephone number is (703) 305-4972. The examiner can normally be reached on 8 am - 5 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on (703) 308-3875. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-3431.

ARC
May 22, 2003

Diego Gutierrez
Supervisory Examiner
Tech Center 2800